

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

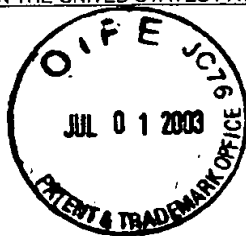
In Re Application of: Toshinobu ARAOKA

Application No.: 09/991,871

Filed: November 26, 2001

For: GRAVEL-OR-THE-LIKE REMOVING DEVICE

Confirmation No.: 3261



Art Unit: 3671

Examiner: K. Florio

Washington, D.C.

Atty.'s Docket: ARAOKA=2

Date: July 1, 2003

THE COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

Sir:

Transmitted herewith is a [XX] REPLY TO SPECIES OF ELECTION REQUIREMENT OFFICE ACTION in the above-identified application.

[ ] Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted

[ ] A verified statement to establish small entity status under 37 CFR 1.9 and 1.27 is enclosed.

[XX] No additional fee is required.

The fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	*	MINUS	** 20	0
INDEP.	*	MINUS	*** 3	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				

SMALL ENTITY	
RATE	ADDITIONAL FEE
x 9	\$
x 42	\$
+ 140	\$
ADDITIONAL FEE TOTAL	
	\$

OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE
x 18	\$
x 84	\$
+ 280	\$
TOTAL	
	\$

OR

OR

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

\*\* If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

\*\*\* If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

[XX] Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

[ ] It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

## Small Entity

## Response Filed Within

[ ] First - \$ 55.00  
 [ ] Second - \$ 205.00  
 [ ] Third - \$ 465.00  
 [ ] Fourth - \$ 725.00

## Month After Time Period Set

## Other Than Small Entity

## Response Filed Within

[ ] First - \$ 110.00  
 [ ] Second - \$ 410.00  
 [ ] Third - \$ 930.00  
 [ ] Fourth - \$ 1450.00

## Month After Time Period Set

[ ] Less fees (\$ ) already paid for \_\_\_ month(s) extension of time on \_\_\_\_\_.

[ ] Please charge my Deposit Account No. 02-4035 in the amount of \$ \_\_\_\_\_.

[ ] Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$ \_\_\_\_\_.

[ ] A check in the amount of \$ \_\_\_\_\_ is attached (check no. ).

[XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK

Attorneys for Applicant(s)

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Telephone: (202) 628-5197

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**JUL 03 2003**  
**GROUP 3600**



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#d/Elect  
7/2/03

ATTY.'S DOCKET: ARAOKA=2

In re Application of:	)	Art Unit: 3671
	)	
Toshinobu ARAOKA	)	Examiner: K. Florio
	)	
Appln. No.: 09/991,871	)	Washington, D.C.
	)	
Date Filed: November 26, 2001	)	Confirmation No. 3261
	)	
For: GRAVEL-OR-THE-LIKE	)	July 1, 2003
REMOVING DEVICE	)	

REPLY TO SPECIES ELECTION REQUIREMENT OFFICE ACTION

MAIL STOP NON-FEE AMENDMENT  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RECEIVED  
JUL 03 2003

GROUP 3600

Sir:

Applicant is in receipt of the Office Action mailed April 1, 2003, entirely in the nature of an election of species requirement.

Applicant has claimed priority from a corresponding application filed in Japan, and has filed a certified copy of the priority application. Accordingly, applicant respectfully requests the PTO to acknowledge receipt of applicant's papers filed under §119.

The PTO has designated eleven species which are said to be patentably distinct from one another, and applicant has

been required to elect one of these species for further prosecution of the merits, even if the requirement is traversed. Accordingly, applicant hereby respectfully and provisionally elects Species I, Figs. 1 and 2, with traverse and without prejudice. The claims which read on the elected Species I of Figs. 1 and 2 are claims 1-8.

Even if the species are not identical to one another, many of the species are very similar. Applicant respectfully notes that the definition of "patentably distinct", as per MPEP 802.01, is "patentable over", i.e. *prima facie* nonobvious. Thus, by making such a requirement for election of species, the PTO is taking the position that each of the eleven species is *prima facie* nonobvious from each of the other eleven species. Respectfully, applicant would doubt that the PTO would take such a position if a non-elected species were found in the prior art, i.e. applicant believes that the PTO would have no hesitation in holding the elected species obvious under §103 from a structurally similar non-elected species found in the prior art.

Applicant respectfully requests that the PTO be consistent. Those species which are considered sufficiently structurally similar to the elected species of Figs. 1 and 2 to be *prima facie* obvious from the elected species should be

examined along with the elected species. Failure to do so would be the application of an unfair double standard.

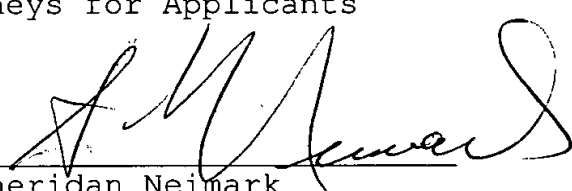
While applicant presently takes no position on whether or not any particular species is *prima facie* obvious or nonobvious from any other species, applicant nevertheless requests the PTO to at least partially withdraw the requirement and to examine plural species on the merits.

Applicant respectfully awaits the results of a first examination on the merits.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicants

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